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DEPARTMENT FOR AF/EPS (BREITER & MALLORY)  
DEPARTMENT PASS TO USTR (HAMILTON)

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TAGS: [ETRD](#) [AGOA](#) [ECON](#) [NI](#)  
SUBJECT: NIGERIA - 2009 AGOA ELIGIBILITY REVIEW

REF: STATE 85086

11. (U) Country: Nigeria  
Current AGOA Status: Eligible

12. (U) Country Background Summary: Estimated population of 147 million. 2006 GDP was \$115.3 billion; 2006 GNI per capita was \$620 (World Bank 2008 data). Nigeria continues to struggle to consolidate its fragile democracy following a civilian-to-civilian handover of power in its national and state elections in April 2007, which were seriously marred by irregularities and fraud. The government is making slow progress in developing an open economy, minimizing government interference, and promoting free market principles. On September 25, 2008 the Ministry of Finance announced that the number of banned import categories would decrease from 44 to 26 items and that there would be tariff reductions on a wide range of products.

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Comments on Eligibility Requirements - Market-based Economy  
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13. (U) Major Strengths Identified: The government has committed to transitioning from a state-directed economy to one driven by market forces. The economy has witnessed overall macroeconomic stability in recent years though inflationary pressures are beginning to arise due to rising global food and energy prices and poor infrastructure. However, the foreign exchange rate has been fairly stable. The "Wholesale Dutch Auction" system of foreign exchange trading was introduced in early 2006, and has led to a sharp reduction in the spread between the official and parallel market exchange rates. The government has also restructured its domestic debt portfolio from 91-day Treasury Bills to Bonds with one to ten years duration.

14. (U) The government maintains a cordial and productive relationship with the IMF. Discussions are ongoing on a successor program to the Policy Support Instrument (PSI) which ended in August 12007. In August 2007, the IMF conducted its fourth and final review under the PSI. The IMF assessment team considered the overall economic outlook as positive. The Nigerian Electricity Regulatory Commission (NERC) has issued 25 licenses to private companies involved in electricity generation and distribution. A Multi-Year Tariff Order (MYTO) for the determination of charges and tariffs for electricity generation, transmission and retail tariffs was recently announced. The MYTO, which would be for the period July 1, 2008 to June 30, 2013, will result in the upward adjustment of the electricity tariff to market rates to ensure that investors in the power sector recoup their investments and turn a reasonable profit. Port concessions are moving forward and an international company was awarded the concession to manage the country's largest port--Apapa Port in Lagos.

15. (U) The Fiscal Responsibility Act to ensure transparency in the use of government revenue and a Public Procurement Act to ensure transparency and value for money in government procurement were passed in 2007. There are plans to enact both laws in the 36 states of the federation before the end of 2008.

¶6. (U) The National Economic Empowerment & Development Strategy (NEEDS), a medium-term economic reform program (2003-2007) focused on privatization, good governance, macroeconomic stability, anti-corruption, and public service reforms is undergoing review to incorporate President Yar'Adua's Seven Point Agenda, which focuses on energy, food security, land reforms, wealth creation, education, security, and transportation. The NEEDS-2 program is due to be presented to the public before the end of 2008. Savings from excess monies from crude oil sales above the budget benchmark price have been put into a special reserve account, rather than used to fuel fiscal expansion. In practice, however, the Excess Crude Account (ECA) only holds about \$8 billion at any given time. The government budget process is taking its rightful position as an economic policy and management tool and the President has promised an earlier submission of the draft budget for the coming year with the expectation that the National Assembly would pass the budget earlier. The budget deficit has been kept in check. There are concerns, however about the degree of execution of the Capital Account. Failure to execute fully is a drag on infrastructure investments. There are ongoing discussions about creating a Sovereign Wealth Fund, though the modalities and the form it will take have not been finalized as yet.

¶7. (U) Financial sector reforms have slowed during President Yar'Adua's first year in office, but are still ongoing. The Central Bank of Nigeria's directive that banks recapitalize from the 2 billion naira (\$16 million) to 25 billion naira (\$197 million) by December 31, 2005 was successfully completed, leading to a reduction in the number of banks from 89 to 25 stronger, better capitalized banking groups (now 24 banks). In addition to the regulatory increase in the banks' capital base, many banks have raised additional capital from the capital market. Between January 2006

ABUJA 00001977 002 OF 006

and January 2008, approximately \$15 billion was raised by the banks via share offerings ranging from Initial Public Offers, Private Placements, and Global Depository Receipts. Sixteen Nigerian banks now rank in the top 1,000 in the world, while five Nigerian banks now rank among the top ten in Africa, compared with 2005 when only four Nigerian banks were ranked among the top 1,000 and in 2004 when no Nigerian banks made it to the top 1,000. Pension and insurance reform are also moving forward.

¶8. (U) A Trade and Investment Framework Agreement (TIFA) with the U.S. provides a mechanism to address trade and investment issues. Nigeria is a top destination for U.S. investment in Africa, due to investment in the petroleum sector. In 2007, U.S. exports to Nigeria increased 24.4% from 2006.

¶9. (U) Major Issues/Problems Identified: Militant and criminal activities in the oil-rich Niger-Delta have shut-in up to 30 percent of oil production, thereby reducing revenues to the federation with its attendant negative impact on budget implementation. A court challenge was raised regarding whether the government has the authority within the constitution to set aside oil revenues above the budget benchmark price in the ECA. The constitution requires that all oil revenue should be deposited into the Federation Account and then shared among the federal, state and local governments. Despite this, the ECA was established in 2003 by the federal government without passage of an enabling law. The government plans to introduce legislation that would legalize an oil reserve account, however, a constitutional amendment may be required

¶10. (U) A huge and inefficient public sector dominates and inhibits faster development of the formal sector. Much of the nation's wealth is concentrated in the hands of a tiny group of military, political, and commercial elites through corruption and non-transparent government contracting practices. The banking system is performing intermediation poorly, thereby impeding small and medium investors. Regulatory and tax regimes are arbitrarily enforced, and regulatory bodies are weak and ineffective. Oil and gas receipts account for 80% of government revenues and over 95% of exports. Fuel subsidies are not budgeted or transparent, and fuel prices continue to be regulated and subsidized. Economic data and statistics are of unreliable quality and availability. Inadequate and unreliable infrastructure is a major barrier to private sector

activity. At this writing, inflation is in the low double digits, up from single digit performance over the past couple of years.

¶11. (U) The establishment of the Nigerian Intellectual Property Commission (NIPCOM) that was announced in early 2007 is yet to be backed by enabling legislation. The 1978 Land Use Act mandates state ownership of land; private use of land is restricted to a 99-year lease and subject to government confiscation without a Certificate of Occupancy or Governor's consent. Conveyance of land requires high-level government approval, promoting corruption and inhibiting property transactions.

¶12. (U) Despite the September 25, 2008 Ministry of Finance announcement that the number of banned import categories would decrease from 44 to 26 items, the existence of any bans is in violation of WTO rules and in the last three years have affected imports of many agricultural and manufactured products. These arbitrary bans encourage smuggling. Import bans accompanied by sole source importation rights to favored companies have impeded competition and are major impediments to imports of a wide range of U.S. products. The Ministry of Finance has also stated that there may be near-term tariff reductions on a wide range of products. Comprehensive trade reform by adoption of the ECOWAS Common External Tariff (CET) was agreed to in the last quarter of 2005; however, the government is presently reviewing its implementation of the CET. In line with the review, on September 25, 2008 the Ministry of Finance proposed a fifth band duty rate of 35 percent. This new proposed duty rate is a decrease from the government's earlier proposal of 50 percent.

¶13. (U) Some U.S. firms with contracts with government entities at the federal, state and local levels face problems receiving timely payments. The Nigerian government's procurement process lacks transparency. Nigeria's Cabotage Law is a barrier to trade and investment and has compelled U.S. firms to exit Nigeria.

¶14. (U) In the oil and gas sector, Nigeria wants existing operators to invest in power production or refining, in an attempt to bring about investment in these sectors. Fuel subsidies distort the local market, discouraging investment in downstream oil and gas activities. Draft legislation mandating high levels of local content in oil and gas related activities is in the National Assembly and may impose additional costs on investments.

¶15. (U) Across several sectors, the government sometimes employs predatory negotiating tactics, including threats to access to inputs, customs and other legal approval processes, and transferring

ABUJA 00001977 003 OF 006

contracts to entities that cannot uphold contract terms. Foreign exchange repatriation regulations are enforced arbitrarily and hinder the transfer of funds. The Manufacturers-in-Bond Scheme has been canceled, and the Export Expansion Grant is the only export incentive available for exporters.

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Political Reforms/Rule of Law/Anti-Corruption  
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¶16. (U) Major Strengths Identified: Elections were held in April 2007 for state governors and assemblies, national legislators and the President, and despite being severely flawed, represented the first transition from one civilian elected government to another since Nigeria's independence in 1960. The Nigerian judiciary made several landmark decisions in 2007 and the trend continued in 2008, affirming its role as an independent arbiter of the national constitution. The election tribunals overturned the results of seven state governorship elections and some legislative elections. The appellate court ruled in five appeals that the gubernatorial elections were nullified, thereby necessitating a re-run in those five states. Three gubernatorial election cases remain open pending appeals at the appellate court level.

¶17. (U) Nigeria has established programs to combat corruption, many of which receive support from the United States and other donors. Since its establishment five years ago, the Economic and Financial Crimes Commission (EFCC) has arrested several high-level officials

in connection with corruption cases and reported it has seized over \$5 billion in assets. The governor of Bayelsa State in southern Nigeria, who was impeached in December 2005 for money laundering and misappropriation of funds and had been on trial, was released through a plea bargain that resulted in the forfeiture of several of his properties and bank accounts both locally and internationally. The EFCC claims it is continuing to investigate ongoing corruption charges against some former state governors and their associates. Approximately ten former state governors are currently facing corruption charges, with the cases against them in varying stages of completion. Also three former ministers and a serving senator are currently facing trial.

¶18. (U) In 2005 the former Inspector-General of Police and the Minister of Education were fired for corruption. The former Inspector General was tried in court and subsequently jailed. The former Senate President was removed from his leadership post for corruption, though he retained his Senate seat. In 2007, the Speaker of the House of Representatives was removed from her position under allegations of corruption and misappropriation of House funds, although she retained her House seat. In 2008, two former Ministers of Aviation and the standing Minister of Health were charged with corruption, as well as the Director of the Police Equipment Fund.

¶19. (U) Major Issues/Problems Identified: The elections of 2007 were marred by serious irregularities and fraud, with violence in some areas. International and domestic observers pointed to widespread corruption throughout the electoral process, including ballot stuffing, intimidation and violence, deliberate miscounting, results tampering, and exclusion of opposition candidates. More than 1,200 petitions were filed with the electoral tribunals contesting the announced results. The Independent National Electoral Commission (INEC), the body charged with the conduct of elections, is not independent, and it was alleged to have conspired with the ruling Peoples Democratic Party (PDP) to manipulate the outcome of the elections. Politicians continue to solicit support from, use and manipulate militias and vigilante groups for their own interests.

¶20. (U) Police and security forces continue to use excessive and sometimes lethal force to beat protesters, suspects, detainees and prisoners, and to conduct arbitrary arrest and detention. Army troops killed nearly 200 unarmed civilians in October 2001 in Benue state, but to date there has been no accountability for the incident. Perpetrators of violence often enjoyed impunity for their deeds. Despite some measured improvement, the judicial system remains inefficient, corrupt, and in need of serious reforms. Judges are subject to both extortion and intimidation, if not outright violence. Some judges are corrupt. Prolonged pretrial detention is an ongoing problem. The government does not provide citizens the right to a speedy and fair trial. Prison and detention conditions remain harsh and life-threatening. Some prisons hold 200 to 300 percent more persons than their designated capacity

¶21. (U) Corruption remains an overwhelming problem at all levels of government and throughout the security forces. Despite the arrest of several high-ranking Nigerian officials by the EFCC, allegations continue that agency investigations target individuals out-of-favor with the government, while those in-favor continue their activities with impunity. The EFCC's inability to bring a number of corruption investigations to closure; the replacement of its internationally

ABUJA 00001977 004 OF 006

respected Chairman; and the transfer of many senior personnel have raised questions about the GON's commitment to fighting corruption.

¶22. (U) Communal violence continues, especially in the oil-rich Niger Delta. Illegal oil bunkering, which the government failed to curb, has fueled corruption, arms trafficking and political instability. At this writing there were anecdotal reports that efforts of the federal government's military Joint Task Force (JTF) have reduced illegal bunkering in certain areas.

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Poverty Reduction

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23. (U) Major Strengths Identified: The National Planning Commission is reviewing NEEDS-2, Nigeria's homegrown Poverty Reduction Strategy. The National Poverty Eradication Program (NAPEP) is being implemented at the local government level, and focusing on micro-enterprise development and other programs. A Microfinance Policy was launched by the Central Bank of Nigeria (CBN) in 2005, with a requirement that all community banks convert to microfinance banks by December 31, 2007. Since 2007 at least 600 microfinance banks have met the stipulated requirements and been licensed by the CBN.

24. (U) Agriculture and energy prices are increasing, putting pressure on poor families with few resources to weather food insecurity. The government has developed a program to start addressing agriculture and rural led economic growth

25. (U) Major Issues/Problems Identified: While overall economic growth is good, there remain serious structural problems with unequal growth for the general public and high income disparities between rich and poor. The government poverty strategy does not clearly link goals and methods; serious concerns remain about fiscal transparency; and human capacity for project implementation is weak. The government is implementing the poverty reduction program slowly.

26. (U) The country has been slow to meet its commitment to develop a compact to implement the Comprehensive African Agriculture Development Program (CAADP). Federal and State level commitment to health and education reforms remains weak, progress against the key Millenium Development Goals is poor.

#### Workers' Rights/Child Labor/Human Rights

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27. (U) Major Strengths Identified: The Nigerian constitution protects the right of association and the right to organize and bargain collectively, but statutory restrictions remain. Most workers, except for members of the armed forces, police, employees designated essential by the government, and employees in export processing zones, may join trade unions and strike, but the law limits justifications for strikes.

28. (U) In 2002, Nigeria signed the International Labor Organization (ILO) Conventions 182 on the Worst Forms of Child Labor, 138 on Minimum Age for Employment, and 111 on Equality of Occupation. Worker rights and child labor laws have been enacted. Nigerian law prohibits forced or bonded labor, forbids the employment of children younger than age 15 in commerce and industry, and restricts other child labor to home-based agricultural or domestic work for a maximum of eight hours a day.

29. (U) During the year the Ministry of Employment, Labor, and Productivity trained approximately 120 labor inspection officers on child labor laws. Eighty officers were trained to perform inspections in high-risk sectors such as agriculture, mining, and the informal sector. The Ministry also sponsored awareness-raising and law-familiarization training programs for local law enforcement, customs, and other government officials. New legislation was passed in 2003 outlawing human trafficking, and the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) was established.

30. (U) The country made some progress in the area of human rights, including making several arrests for trafficking in persons; however, serious problems remain, such as continued lack of accountability for past abuses. The Constitution provides for freedom of religion, and the government generally respects that right, although some state governments place restrictions on freedom of religion.

31. (U) The relationship between the government and the two union federations (the Nigerian Labor Congress and Trade Union Congress) has improved with the swearing in of President Yar'Adua's administration. A national labor strike in June 2007 was peaceful, with security forces and labor members showing considerable restraint. As a result of that strike, the Yar'Adua administration reversed several policies of the Obasanjo government that were



opposed by labor, including: a partial reduction of the fuel price increase and a guarantee not to raise the price further for one year, a reversal of the VAT increase, a review of the Port Harcourt and Kaduna refinery sales, and an agreement to pay an owed civil servant salary increase.

¶32. (U) Major Issues/Problems Identified: The Trade Unions Act does not ensure workers' right to form and join unions of their own choosing, deems all registered trade unions to be affiliated with a central labor organization, and violates the ILO convention on the Right of Association. The Trade Unions (Amendment) Decree of 1996 makes check-off payment of dues conditional on a "no-strike" clause during the lifetime of the collective agreement. The Trade Unions Amendment Act of March 2005 criminalizes meetings between labor and civil society organizations and bans nation-wide strikes on issues of national economic policy; however, these sections of the law have not been enforced in practice.

¶33. (U) Labor rights have been limited by targeted layoffs and terminations of labor activists, by intimidation to press workers to leave unions, and by the increased use of casual labor, especially in the oil industry. Several statutory restrictions on the right of association and on trade unions restricted the right to form or belong to any trade union or association. There are no laws to prohibit retribution against strikers, but strikers who believed they were victims of unfair retribution could submit their cases to Industrial Arbitration Panel (IAP). Decisions of these bodies infrequently carried the force of law.

¶34. (U) The labor laws apply to legal foreign workers, but not all companies respected these laws in practice. Payments of salaries to federal, state and local government workers are often several months in arrears; workers who protest or strike over arrearages face dismissals, threats of layoffs, and pressure to agree to lowered minimum wages. The government places limits on freedom of assembly and association, citing security concerns.

¶35. (U) Trafficking in persons for purposes of sexual exploitation and forced labor is a problem, allegedly with the collusion of government officials. Some persons, including children, are subjected to forced labor and sexual exploitation. Young boys were trafficked primarily to work as forced bondage laborers, street peddlers, and beggars, while girls were trafficked for domestic service and commercial sexual exploitation. Child labor continues to be a problem. To date the Child Rights Act has only been ratified by sixteen states. It has passed the State House of Assembly in three more states and is currently awaiting the Governor's signature.

¶36. (U) Domestic violence and discrimination against women remain widespread, underreported, and considered socially acceptable. Police rarely intervene in cases of domestic abuse. Rape and sexual harassment are common, to the point that rape is considered epidemic at universities. Women and girls in all parts of the country are subjected to female genital mutilation (FGM), which the government publicly opposes. Laws protecting the rights of the child are inadequate and seldom enforced. Child abuse, abandonment, and exploitation for labor or sex remain serious problems.

¶37. (U) The law prohibits homosexuality; homosexual practices are punishable by prison sentences of up to 14 years. In the 12 northern states that have adopted Shari'a law, adults convicted of having engaged in homosexual intercourse are subject to execution by stoning; however, this sentence has not yet been handed down in practice. Persons living with HIV/AIDS experienced widespread discrimination in seeking employment and health care services.

International Terrorism/U.S. National Security

¶38. (U) Major Strengths Identified: In June 2007, the Nigerian Financial Intelligence Unit (NFIU) was admitted as a member of the Egmont Group of FIUs. In June 2006, Nigeria was de-listed from the Financial Action Task Force list of Non-Cooperative Countries and Entities. The Nigerian Financial Intelligence Unit, Economic and

Financial Crimes Commission, Securities and Exchange Commission, Central Bank and other regulators in the financial services industry are collaborating to identify and freeze terrorist assets in Nigeria.

¶39. (U) Major Issues/Problems Identified: Militant activities in the Niger-Delta have led to a reduction in oil production, reducing revenues to the federal government and hampering effective implementation of the national budget. Events in Nigeria can negatively affect world oil supplies and prices.

¶40. (U) There are concerns about the president's health, which invariably affects how government is run in Nigeria. Most Nigerians opine that the current administration is too slow in implementing

ABUJA 00001977 006 OF 006

its programs.

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